



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 14 2017

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Kenneth Calvert
Chairman
Subcommittee on Interior,
Environment, and Related Agencies
Committee on Appropriations
House of Representatives
Washington, D.C. 20515

The Honorable Betty McCollum
Ranking Member
Subcommittee on Interior,
Environment, and Related Agencies
Committee on Appropriations
House of Representatives
Washington, D.C. 20515

The Honorable Lisa Murkowski
Chairman
Subcommittee on Interior,
Environment, and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

The Honorable Tom Udall
Ranking Member
Subcommittee on Interior,
Environment, and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Chairmen Calvert and Murkowski and Ranking Members McCollum and Udall:

Enclosed is the U.S. Environmental Protection Agency's response on the status of Gold King Mine reimbursement requests. This is in accordance with a request from the FY 2017 Omnibus Consolidated Appropriations Act (P.L. 115-31) which directs the agency to provide any reporting requirements contained in House Report 114-632 and Senate Report 114-281. Furthermore, Senate Report 114-281 instructs the EPA to submit a report to the Committees on Appropriations on the status of reimbursement requests related to Gold King Mine:

***Animas River Spill** --Within 30 days of enactment, EPA shall provide the Committee with a written report outlining all State, local, and Tribal reimbursement requests and their status as granted, denied, or pending, with an explanation of the source of funds and any reasons for denial or pending requests.*

The report explains the status of requests for reimbursement of eligible response costs for the Gold King Mine response submitted to the EPA as of July 31, 2017. The report discusses how the EPA has implemented the Gold King Mine reimbursement related requirements of the Water Infrastructure Improvements for the Nation Act (P.L. 114-322), the requests the EPA could not reimburse, and those requests under review by the EPA. Attachment 1 includes information on all reimbursement requests received as of July 31, 2017.

Should you need additional information or have further questions, please contact me, or your staff may contact Ed Walsh at (202) 564-4594.

Sincerely,

A handwritten signature in blue ink, consisting of a large loop followed by several smaller loops and a long horizontal line extending to the right.

David A. Bloom
Acting Chief Financial Officer

Enclosures

1. Status of the EPA's Gold King Mine Response Reimbursements to States, Tribes, and Local Governments
2. Attachment 1: Gold King Mine Reimbursements - Awards Made, Requests Under Review, and Ineligible Costs (as of July 31, 2017)

Status of the EPA's Gold King Mine Response Reimbursements to States, Tribes and Local Governments

Summary

The Consolidated Appropriations Act, 2017, Pub. L. 115-31 (May 2017), directs the EPA to respond to any reporting requirements contained in the Senate Appropriations Committee Report 114-281 (June 16, 2016). That Report provided that the "EPA shall provide the Committee with a written report outlining all State, local, and Tribal reimbursement requests and their status as granted, denied, or pending, with an explanation of the source of funds and any reason for denial or pending requests." This report responds to the Committee's direction, and explains the status of requests for reimbursement of eligible response costs submitted to the EPA as of July 31, 2017. The report discusses how the EPA has implemented the Gold King Mine reimbursement related requirements of the Water Infrastructure Improvements for the Nation Act, the requests the EPA could not reimburse, and those requests under review by the EPA. Attachment 1 includes information on all reimbursement requests received as of July 31, 2017.

Response Costs Awarded

Using the EPA's authority under the Comprehensive Environmental Response, Compensation, and Liability Act, the EPA reimbursed states, tribes, and local governments for the eligible response costs they incurred responding to the August 5, 2015, Gold King Mine release. Pursuant to CERCLA and federal grant regulations, the EPA is authorized to enter into cooperative agreements for allowable response-related activities. Cooperative agreements may include costs associated with response-related activities such as personnel staff time and travel expenses related to responding to the emergency, field work including water and soil testing, and sample and data analysis. As of July 31, 2017, the EPA reimbursed approximately \$3.9 million in response costs incurred as a result of responding to the August 5, 2015, release to states (Colorado, Utah, New Mexico, Arizona), local governments (San Juan County/Silverton, San Juan Basin Public Health Department, La Plata, and Durango, Colorado), and tribes (Southern Ute Indian Tribe and Navajo Nation).¹

Water Infrastructure Improvements for the Nation (WIIN) Act Implementation

The WIIN Act (enacted December 16, 2016) directs the EPA to pay "any eligible response costs" related to the GKM release. Additionally, the WIIN Act opens a CERCLA § 111(a)(2) claims process for states, tribes, and local governments, and waives the claims' preauthorization requirement for costs incurred through September 9, 2016. Under the WIIN Act, states, tribes, and local governments may file CERCLA claims within 180 days of enactment on December 16, 2016. The WIIN Act requires the Agency to decide on and award any reimbursement of eligible response costs within 90 days of receiving the submission.

Response costs eligible for reimbursement under the WIIN Act include removal and remedial response costs incurred through September 9, 2016, and the EPA-approved response costs incurred after September 9, 2016. The WIIN Act, however, does not alter other required

¹ Please see the spreadsheet in Attachment 1 for more information about the cooperative agreement awards.

reimbursement criteria; including consistency with the National Oil and Hazardous Substances Contingency Plan; are actual responses costs associated with the August 5, 2015, GKM release; provide adequate cost documentation; and satisfy federal cost principles. To date, no entities have submitted CERCLA § 111(a)(2) claims under the WIIN Act.

The WIIN Act does not preclude the EPA from using cooperative agreements to reimburse eligible response costs relating to the GKM release. On March 16, 2017, the EPA issued guidance on how we would evaluate requests for reimbursement and use CERCLA cooperative agreements to reimburse eligible response costs incurred.² The EPA has communicated to the affected state, local and Tribal entities the process for seeking reimbursement of additional costs, either through cooperative agreements or CERCLA § 111(a)(2) claims. As of July 31, 2017, the Agency awarded additional eligible response costs to Utah, Southern Ute Indian Tribe, San Juan Basin Public Health Department, Colorado, La Plata County, Colorado, and Durango, Colorado, through cooperative agreements.

Ineligible Costs

In December 2016, the EPA sent letters to some entities notifying them of the ineligibility of certain costs.³ Some requests for reimbursement could not be funded by the EPA. These included requests to construct new infrastructure, purchase new emergency response vehicles not used during the August 5, 2015, response, hire new staff, pay for outside counsel to explore legal action against the EPA, reimburse personnel costs incurred at a higher than reasonable rate, and requests that did not include adequate cost documentation.

Since the enactment of the WIIN Act the Navajo Nation, Southern Ute Indian Tribe, La Plata County, Colorado, and San Juan Basin Public Health Department, Colorado have appealed these decisions. Some of the requested response costs were reevaluated in light of the WIIN Act. The EPA made subsequent payments to La Plata County and the San Juan Basin Public Health Department. The appeals from Navajo Nation and Southern Ute Indian Tribe are, respectively, with the EPA Region 8 and Region 9 Disputes Decision Officials.

Requests Under Review

The WIIN Act provided states, local, and tribal governments a deadline of June 14, 2017, for submitting reimbursement claims to the EPA for consideration. Additional requests for reimbursement are under review by the EPA. As of July 31, 2017, per the WIIN Act, the EPA received a request from the state of Utah requesting pre-approval for future water monitoring costs. The EPA is reviewing reimbursement requests from the Navajo Nation, on behalf of member chapters, and the state of Utah.

² The EPA posted the guidance to its regions, and other information related to the WIIN Act implementation, on its website: <https://www.epa.gov/goldkingmine/water-infrastructure-improvements-nation-wiin-act>.

³ Notification letters were sent to the following entities: Southern Ute Indian Tribe, San Juan County/Silverton, La Plata County, City of Durango, the San Juan Basin Public Health Department, New Mexico and Navajo Nation and are available here: <https://www.epa.gov/goldkingmine/final-decision-notification-letters-stakeholders-regarding-response-cost-requests>.

Attachment 1: GKM Reimbursements - Awards Made, Requests Under Review and Ineligible Costs (as of July 31, 2017)

	Total CERCLA Response Costs Awarded	CERCLA Response Costs Under Review	Ineligible Costs	Future Costs Requested Under CERCLA Pre-WIIN Act (approximate)	Future Costs Requested Under CERCLA Post-WIIN Act
Region 6					
New Mexico	\$ 1,072,585.00		\$ 236,242.00		
Region 8					
Colorado	\$ 161,049.00				
La Plata County, CO	\$ 416,046.00		\$ 8,608.42	\$ 1,847,994.00 *4	
San Juan Basin Public Health Department, CO	\$ 90,742.00	\$ 20,969.45	\$ 384.52	\$ 443,484.00 *4	
San Juan County/Silverton, CO	\$ 349,564.90		\$ 6,030.49	\$ 8,428,868.00 *4	
Durango, CO	\$ 158,002.00		\$ 192,711.65	\$ 5,232,183.00 *4	
Southern Ute Tribe (SUIT)	\$ 282,177.00		\$ 75,776.00 *2	\$ 5,097,027.37 *4	
Utah	\$ 710,403.00 *1	\$ 191,565.65	\$ 225.22		\$ 1,842,500.00 *5
Region 9					
Navajo Nation	\$ 602,794.00	\$ 600,000.00	\$ 807,720.00 *3		
Arizona	\$ 39,425.00				
Total	\$ 3,882,787.90	\$ 812,535.10	\$ 1,327,698.30	\$ 21,049,556.37	\$ 1,842,500.00

Footnotes

*1 - This amount includes \$6,718.00 of state expenditures that were incurred prior to September 9, 2016. These costs were determined allowable and eligible, and will be awarded shortly.

*2 - \$48,034.51 of these denied costs are on appeal with the Regional Disputes Decision Official (DDO) in Region 8. The DDO has 180 days from filing to render a decision (August 7, 2017).

*3 - \$113,000 of these denied costs were on appeal with the Regional DDO in Region 9. The DDO has determined it is payable; Region 9 will amend the existing cooperative agreement to award \$113,000 by August 27, 2017.

*4 - Future costs were denied on December 8, 2016.

*5 - This request for pre-approval of future costs was submitted on March 22, 2017, and is under review as part of the \$4 million WIIN appropriation for long-term water quality monitoring.